IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2116 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KISHANBHAI LAXMANBHAI SONDARVA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2116 of 2002
MS SUBHADRA G PATEL for Petitioner No. 1
MR SJ DAVE, AGP for Respondent No. 1-3
RULE SERVED BY DS for Respondent No. 1-2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 10/05/2002

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 12-12-2001 passed by the

District Magistrate, Junagadh District, Junagadh and he has been branded as a Property Grabber. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act.

3. I have heard learned advocate for the petitioner at length and learned AGP, Mr.S.J.Dave for the respondents. I have also perused the material on record. Though several contentions were raised in the petition, learned advocate for the petitioner has restricted her arguments on the ground of delay in deciding the representation. She has submitted that brother of the detenu has made a representation on 5-1-2002 to the State Government, but it was rejected on 11-1-2002 and same was communicated to the detenu by letter dated 15-1-2002 and, therefore, there is a delay in deciding the representation and in communicating the representation also. In this regard, she has produced copy of the communication dated 15-1-2002 sent by the Home Department. Same is ordered to be taken on record. She has relied upon the case of Harish Pahwa Vs. State of U.P. and others, AIR 1981 S.C. 1126, more particularly para 3 which runs as under:

> "The representation made by a detenu has to be considered without any delay. The Supreme Court does not look at equanimity upon delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital importance. It is the duty of the State to proceed to determine representations with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. Where this is not done the detention has to be declared unconstitutional."

4. In the present case, it appears that the representation dated 5-1-2002 sent to the State Government was rejected by the State Govt. on 11-1-2002 and same was communicated to the detenu vide letter dted 15-1-2002 and hence, there is a delay in deciding the

representation and communicating the rejection of his representation. However, no explanation has been putforward by the authority for the same. Since no explanation has been putforth by the concerned authorities for the aforesaid delay, the order of detention is illegal and the same cannot be sustained.

5. The petition is allowed. The impugned order of detention dated 12-12-2001 passed against the detenu is hereby quashed and set aside. The detenu Kishanbhai Laxmanbhai Sondarva is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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